FORM NLRB-4479

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

(San Francisco, California)

ABM SECURITY SERVICES d/b/a AMERICAN COMMERCIAL SECURITY SERVICES 1/

Employer

and

INTERNATIONAL UNION, SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA, (SPFPA) 2/

Cases 20-RC-17816
20-RC-17817

Petitioner

and

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 24/7 (IUSO) 3/

Limited Intervenor

20-RC-17816 and 20-RC-17817 **DECISION AND ORDER**

Upon a petition duly filed under Section 9*(c)* of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3*(b)* of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. 4/

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 5/

3. The labor organization(s) involved claim(s) to represent certain employees of the Employer. 6/

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9*(c)(1)* and Section 2*(6)* and *(7)* of the Act for the following reasons.7/

ORDER

IT IS HEREBY ORDERED that the petition(s) filed herein be, and it (they) hereby is (are), dismissed.8/

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, 1099-14th Street, NW, Washington, DC 20570-0001**. This request must be received by the Board in Washington by March 12, 2003.

Dated February 26, 2003

at San Francisco, California

/s/ Robert H. Miller
Regional Director, Region 20

1/ The name of the Employer appears as stipulated by the parties and, based on that stipulation, my finding that the Employer is a wholly owned subsidiary of ABM Industries.

2/ The Petitioner's name is in accord with the parties' stipulation.

3/ The Limited Intervenor's name is in accord with the parties' stipulation.

4/ It is undisputed that the Limited Intervenor is a labor organization that admits non-guards to membership and therefore, under Section 9(b)(3) of the Act, cannot be certified by the Board as the exclusive collective-bargaining representative of a guard unit. However, the Limited Intervenor and the Employer were parties to a collective-bargaining agreement covering the Employer's guard employees, including those petitioned-for herein, that expired on December 20, 2002. As the Limited Intervenor is currently recognized by the Employer as the collective-bargaining representative of the employees at issue herein and is party to a recently expired collective-bargaining agreement covering those employees, it clearly is an interested party to this proceeding inasmuch as the Petitioner is seeking to carve out a portion of the unit it represents. In these circumstances, and as the Limited Intervenor possesses evidence concerning the appropriateness of the scope of the petitioned-for unit, the collective bargaining history and area bargaining patterns relevant to a determination of whether the petitioned-for unit is an appropriate unit, I find that it was properly permitted to intervene in this proceeding for the limited purpose of providing such evidence and argument. In reaching this decision, I have taken administrative notice of the Order Denying Motion to Intervene, To Show Cause and Indefinitely Postponing Hearing issued by the Acting Regional Director of Region 19 in Eagle Guard Services, Case 19-RC-14289, on January 19, 2003. However, I have determined under the circumstances herein to allow the Limited Intervenor to intervene in these proceedings for the limited purposes described above.

5/ The parties stipulated, and I find, that the Employer is a California corporation with its principal place of business in San Francisco, California, where it is engaged in providing guard services and security protection services. The parties further stipulated, and I find, that on an annual basis, the Employer provides services valued in excess of $50,000 for customers located directly outside the State of California. Based on the parties' stipulation to such facts, I find that the Employer is engaged in commerce and that it will effectuate the purposes and policies of the Act to assert jurisdiction in this matter.

6/ The parties stipulated, and I find, that the Petitioner and the Limited Intervenor are each a labor organization within the meaning of the Act.

7/ No party contends that there is a contract bar to this proceeding.

8/ By the petition in Case 20-RC-17816, the Petitioner seeks to represent a unit comprised of all full-time and regular part-time security officers performing guard duties as defined in Section 9(b)(3) of the Act, employed by the Employer at 100 Bush Street, San Francisco, California;

and excluding all other employees, office clerical employees, professional employees and supervisors as defined in the Act. By the amended petition in Case 20-RC-17817, the Petitioner seeks to represent in a separate unit, all full-time and regular part-time security officers performing guard duties as defined in Section 9(b)(3) of the Act, employed by the Employer at 303 Second Street, San Francisco, California; excluding all other employees, office clerical employees, professional employees and supervisors as defined in the Act.

The Employer's main office is located at 420 Taylor Street in San Francisco. It typically provides security services to property managers and employs guards who work at 28 building sites in San Francisco, five in the East Bay and two in the North Bay. The Employer provides security services at 100 Bush Street and at 303 Second Street in San Francisco. At the time of the hearing the Employer employed five guards at the Bush Street location and seven guards at the 303 Second Street location. Overall, the Employer employs about 325 guard employees in San Francisco and about fifty guard employees in the East and North Bay. All of these 375 guards have been covered under a collective-bargaining agreement between the Employer and the Limited Intervenor since the early 1990's.

The record shows that the work of all of the security officers employed by the Employer is basically the same, requiring the same skills and training.

The Employer has a centralized human resources department at its main office that handles personnel matters for all of its locations, including decisions involving the suspension and termination of employees at all of its locations. Personnel files for employees at all Employer locations are kept in the human resources office. The Employer also has a centralized dispatch system operating twenty-four hours a day. Hiring decisions are centralized but new hires also interview with the property manager at the various work sites to determine if there is a "match" between the employee and the worksite. The Employer also conducts a common orientation training for newly hired guards at its main office in addition to having on-site training by the site supervisor or a lead officer at the various individual locations.

The Employer has an operations manager and an assistant operations manager. The operations manager makes rounds of the Employer's various work sites on a daily basis. Each of the Employer's larger sites, including the two sites at issue herein, has a site supervisor who regularly performs guard duties. The record reflects that the site supervisors report to the Employer's operations manager. The site supervisors schedule employees at their respective buildings on a daily basis and can request, but not require, employees to work overtime at their respective facilities. While the record reflects that the site supervisors interview employees, the evidence does not establish that they make effective hiring recommendations. While it appears that the site supervisors may write up warnings to employees, the record reflects that they generally consult with the Employer's main office before doing so and the Employer's main office investigates such matters unless they involve situations that are "black and white." The record does not show what effect, if any, such warnings have on employees. The site supervisors do not suspend or terminate employees

nor do they make recommendations for such actions. The site supervisors earn two to three dollars more an hour than do other guards and they have the same benefits.

The Employer has two field supervisors who assist the operations manager and who travel from site to site and check on the guards and report to the Employer's main office. The field supervisors deliver paychecks to employees at their work sites. The record does not contain any other evidence regarding the supervisory status of these field supervisors.

As indicated above, the site supervisors handle the daily work scheduling at the larger sites. For smaller locations, such scheduling is handled by the Employer's main office. The property management of a particular building normally determines what the shifts will be for its building, and if they are changed, the Employer's dispatcher notifies the guards of the change.

The record reflects that the removal of a guard from a building generally results from a decision by the property manager and the site supervisor of that building. Such removals can be caused by personality differences, in which case the Employer assigns the guard who has been removed to another work site. If it is caused by misconduct, the Employer will take action to correct the misconduct and may discipline or terminate the employee. The record is silent with respect to what role, if any, the site supervisor has in such instances.

At the larger sites, the site supervisors handle the scheduling of vacation leave for guards at the site and make arrangements to have other guards substitute for absent guards. Such decisions must be approved by the Employer's main office. For smaller sites, vacation scheduling is handled directly by the dispatcher at the Employer's main office.

If employees are absent from work, the Employer uses guards from other building sites that have been trained to work at that particular location as substitutes. The record does not disclose how often this occurs. The Employer also has "rovers" who are trained to work at multiple facilities and who are not permanently assigned to any single location. The record is silent with regard to how large this group of "rovers" is and how much coverage they provide for employees at the petitioned-for locations as well as other locations.

The record contains the testimony of a current employee who has worked for the Employer since the early 1990's, and who worked at the 303 Second Street site in the fall of 2002. This employee testified that he had been trained to work at over twenty locations and that he had worked at multiple sites filling in for absent employees.

Bargaining History. As noted above, since at least the early 1990's, the Employer has had a series of collective-bargaining agreements with the Limited Intervenor. The most recent agreement, herein called the Agreement, was effective for the period May 24, 1997 to October 31, 2001, and was extended by the parties until December 20, 2002. The recognition clause of the Agreement states that the

Employer recognizes the Limited Intervenor as the exclusive representative for all employees employed by the Employer as guards, fire patrol and/or security officers who are not covered by the Waterfront Agreement; excluding all office employees and all field supervisory employees with the authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees. It is undisputed that except for those locations covered under the Waterfront Agreement, the Agreement covered all of the Employer's locations in the San Francisco Bay Area, including those locations at issue in this proceeding. Under the Agreement, guards working at the Employer's various work sites had uniform benefits that remained with them if they transferred among various work sites. Under the Agreement, grievances were handled on a centralized basis.

Area Bargaining Practices. The record contains several collective-bargaining agreements between the Limited Intervenor and other employers that provide security services in the San Francisco Bay Area. These agreements show that the general industry practice in the area is for multi-location units of security officers. In this regard, I take administrative notice of my recent decisions in the following cases involving petitions for guard units in the San Francisco Bay Area: *Professional Technical Security Service, Inc*., 20-RC-17822; *Pinkerton Security Services, Inc*., 20-RC-17815 and 20-RC-17819; and *Cypress Security*, LLC, 20-RC-17814.

Analysis. As noted above, the Petitioner seeks to represent in two separate units, security guards who work at two of the Employer's approximately 35 job locations. In determining whether a petitioned for single location unit of a multi-location Employer is an appropriate unit, the Board evaluates the following factors: employees' skills and duties; terms and conditions of employment; employee interchange; functional integration; geographic proximity; centralized control of management and supervision; and bargaining history. *Bashes, Inc*., 337 NLRB No. 113 (June 26, 2002); *Alamo Rent-A-Car*, 330 NLRB 897 (2000); *NLRB v. Carson Cable TV,* 795 F.2d 879, 884 (9th Cir. 1986). Generally, a single facility unit is presumed to be an appropriate unit See *New Britain Transportation Co*., 330 NLRB No. 57 (slip op at 1) (December 30, 1999), citing *J&L Plate, Inc.,* 310 NLRB 429 (1993). However, the instant case involves not single facilities of the Employer but single site locations where the Employer's guards are assigned to work. In any event, assuming that the single location presumption is applicable in these cases, I find that the evidence showing that the petitioned-for units are not appropriate has overcome it. Thus, application of the foregoing factors to the two single location units petitioned for herein shows that neither of the single location units sought by the Petitioner is an appropriate unit.

The evidence establishes that the security guards at all of the Employer's locations have basically the same skills and duties and receive the same pay and benefits. With regard to supervision, the evidence does not show that the site supervisors at the petitioned-for locations are statutory supervisors. The evidence discloses that the site supervisor at each of the locations petitioned for herein schedules employees on a daily basis; can request but not

require employees to work overtime; is involved in interviewing job applicants; and decides with the property manager whether an employee should be transferred from the building. However, the record does not establish that the site supervisors exercise any independent judgment with regard to these functions and does not establish that their duties in this regard are other than routine. In these circumstances, I cannot find that the site supervisors, who work regular guard shifts, are statutory supervisors. Thus, the employees at the petitioned-for locations are supervised by the Employer's operations manager and assistant operations manager and thus share common supervision with employees at several, if not all, of the Employer's other locations. In this regard, the record shows that the Employer has a centralized management which decides suspensions and terminations and which investigates disciplinary warnings; approves time off requests; handles grievances; maintains employee personnel files; and administers a centralized payroll system.

With regard to the geographic proximity of these locations, I take administrative notice of the fact that certain of the locations covered under the Agreement are in downtown San Francisco, and that the other locations are in the Bay Area and thus not geographically distant from each other.

Although the record does not disclose the level of interchange among the various Employer locations, it does show that the Employer has a practice of training employees to work to work at multiple locations; that employees work at multiple locations; and that the Employer has a centralized dispatch system for this purpose. The record also discloses that if an employee is removed from a particular location and a disciplinary problem is not involved, the Employer tries to relocate that employee to another location. I also note that the evidence indicates that the Employer has had a ten-year history of bargaining with the Limited Intervenor on a multi-location basis and that the pattern of bargaining in the security industry in the San Francisco Bay Area has generally been on a multi-site basis.

Based on the foregoing, I find that neither of the single facility units petitioned for herein is an appropriate unit. Although the Petitioner has indicated its willingness to proceed to an election in a different unit than those petitioned for, in the absence of a petition in a broader unit and a sufficient showing of interest, I decline to make a determination as to as to what would constitute an appropriate unit or units. Accordingly, I am dismissing the instant petitions without prejudice to the Petitioner to file with a sufficient showing of interest, a petition or petitions in other units.

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